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Economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories

Security Council
Sixty-fourth year

Letter dated 9 April 2009 from the Permanent Representative of Namibia to the United Nations addressed to the Secretary-General

I have the honour to transmit to you a letter dated 8 April 2009 from the representative of the Frente Polisario addressed to the President of the Security Council (see annex).

I should be grateful if you would arrange for the present letter and its annex to be circulated as a document of the General Assembly, under the agenda item 34, and of the Security Council.

(*Signed*) Kaire M. **Mbuende**
Ambassador
Permanent Representative

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Annex to the letter dated 9 April 2009 from the Permanent Representative of Namibia to the United Nations addressed to the Secretary-General

Letter dated 8 April 2009 from the representative of the Frente Polisario addressed to the President of the Security Council

On behalf of the Frente Polisario, I wish to bring to your attention the systematic and ongoing plunder of the natural resources of Western Sahara by the Kingdom of Morocco and cooperation foreign interests. These activities are in clear breach of the international legal principles applicable to the utilization of the natural resources of Western Sahara as a recognized Non-Self-Governing Territory under the Charter of the United Nations.

The Territory of Western Sahara and its offshore areas are rich in natural resources. Phosphate reserves, including those in the BuCraa mine, are estimated to contain 1.13 billion cubic metres of phosphate rock. Areas offshore of Western Sahara's 1,200 kilometre coastline contain some of the world's richest and most productive fisheries and, according to numerous geological surveys, the Western Sahara continental shelf is thought to have significant reserves of oil and methane gas.

In accordance with General Assembly resolution 1514 (XV), which contains the Declaration on the Granting of Independence to Colonial Countries and Peoples, the natural resources of the Western Sahara are the heritage of the Saharawi people. Activities which deprive the Saharawi people of the right to enjoy and benefit from the exploitation of those resources are in contravention of international law.

In this regard, I draw your attention to the long-standing illegal exploitation of the rich phosphate resources of the Territory of Western Sahara. A Moroccan State-owned company, PhosBoucraa, a subsidiary of the Office Chérifien des Phosphates, operates the mine at BuCraa in the north-west of the Territory. The mine is estimated to produce approximately 3 million tons of phosphate rock annually, worth billions of dollars in exports.

The International Court of Justice established unequivocally that there were "no ties of territorial sovereignty between Morocco and the Territory of Western Sahara" prior to the Spanish colonization of the Territory.

In addition, the United Nations Under-Secretary-General for Legal Affairs and Legal Counsel confirmed, in an important legal opinion provided to the Security Council in January 2002, that the so-called Madrid Agreement between Spain, Morocco and Mauritania "did not transfer sovereignty over the Territory, nor did it confer upon any of the signatories the status of an administering Power". In the absence of any such links, it is clear that Morocco has no legitimate authority to exploit the phosphate resources at the BuCraa mine. It is in this context that the United Nations Legal Counsel declared in his 2002 opinion that: "If further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the principles of international law applicable to mineral resources activities in Non-Self-Governing Territories".

Given the clarity of the applicable law, we cannot but express our dismay and serious concern at the ongoing plunder by Moroccan-flagged vessels and foreign fishing interests of the Saharawi people's offshore fisheries resources. I wish to draw to your particular attention fisheries conducted by European Union-flagged vessels pursuant to the 2005 Fisheries Partnership Agreement between the European Communities and the Kingdom of Morocco (Fisheries Partnership Agreement).

According to its terms, the Fisheries Partnership Agreement purports to provide European Union vessels with fishing opportunities in "the waters falling within the sovereignty or jurisdiction of the Kingdom of Morocco". In the absence of any sovereign ties between Morocco and Western Sahara, it follows that the waters off Western Sahara cannot and do not fall under the jurisdiction of Morocco. In spite of this legal reality, the Fisheries Partnership Agreement is silent on the southern extremity of its area of application, a silence which is exploited unlawfully by the European Union and Morocco to allow access by European vessels to the fisheries resources off the coast of Western Sahara. For their complicity in the theft of Western Saharan natural resources, the Kingdom of Morocco will receive a total of more than 144 million euros (€).

The former United Nations Legal Counsel responsible for the aforementioned legal opinion provided to the Security Council in 2002, Ambassador Hans Corell, confirmed recently that, in failing to make an express distinction between Moroccan waters and those of Western Sahara, the European Union-Morocco Fisheries Partnership Agreement is in clear violation of international law. I note in this context the recent passage of Law No. 03/2009 of 21 January 2009 Establishing the Maritime Zones of the Saharawi Arab Democratic Republic, which declares for the Saharawi Arab Democratic Republic (SADR) a 200-nautical mile Exclusive Economic Zone, in accordance with international law. Pursuant to this legislation, the Government of the SADR renders illegal any activities related to the exploration or exploitation of the marine living and non-living resources of Western Sahara conducted without its express authorization.

It has also come to the attention of the Frente Polisario that entities of the Kingdom of Morocco have entered into commercial arrangements purporting to grant reconnaissance and exploration rights in respect of the Western Sahara Territory and adjacent offshore areas. As made clear in the aforementioned opinion of the United Nations Legal Counsel to the Security Council in 2002 (S/2002/161), exploration activities undertaken in disregard of the wishes and interests of the people of Western Sahara are in violation of international law. On behalf of the Saharawi people, the SADR Petroleum Authority has protested vociferously against such activities.

Most recently, SADR Petroleum Authority issued letters of protest in January 2009 to United States-based Kosmos Energy LLC and its Dutch and Norwegian-based technical contractors (Fugro NV and Fugro-Geoteam, respectively) in relation to exploration activities conducted under agreements with Morocco authorities. Similar protests in the past have resulted in withdrawal from the Western Saharan Territory of operations by French-based TotalFinaElf S.A. and United States-based Kerr-McGee Corporation. Of further concern are recent revelations that Texas-based San Leon Energy Plc and its joint venture partners (including Island Oil and Gas, an Irish-based international oil and gas company), are pursuing, with Morocco's Office National des Hydrocarbures et des Mines, an upgrade of their purported Reconnaissance Licence in the Zag Basin area (in the northern part of Western Sahara) to a full exploration licence. As made clear by the United Nations Legal

Counsel in 2002, activities pursuant to such a licence would be in direct violation of international law.

As reaffirmed most recently in General Assembly resolution 63/102 of 18 December 2008, the Saharawi people have the exclusive right to the enjoyment of their natural resources and to dispose of those resources in their best interests.

To ensure that the fundamental rights of the Saharawi people are upheld, we call on Member States, consistent with General Assembly resolution 63/102, to take "legislative, administrative or other measures in respect of their nationals and the bodies corporate under their jurisdiction that own and operate enterprises in the Non-Self-Governing Territories that are detrimental to the interests of the inhabitants of those Territories, in order to put an end to such enterprises".

The Frente Polisario, as the internationally recognized representative of the Saharawi people, reserves the right to use all available means, including legal avenues, to prevent and seek reparation in respect of any unauthorized activities relating to the natural resources of Western Sahara.

We believe that it is the responsibility of the Member States of the United Nations, and in particular the Security Council, to restore respect for international law, and to call a halt to the illegal plunder of the natural resources belonging to the people of Western Sahara. This deplorable situation seriously undermines any efforts at confidence-building that might engender progress towards a peaceful solution that provides for the self-determination of the people of Western Sahara.

I would be most grateful if you would bring the present letter to the attention of the members of the Security Council.

(*Signed*) Ahmed **Boukhari**
Representative of the Frente Polisario